

**FACT SHEET**  
**VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP)**  
**GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM**  
**CONSTRUCTION ACTIVITIES**  
**Prepared pursuant to 4VAC50-60-520**

The Virginia Soil and Water Conservation Board (Board) is considering the reissuance of a Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities to state waters of the Commonwealth of Virginia. Regulations developed under the federal Clean Water Act (33 USC §1251 et seq.) and the Virginia Stormwater Management Act (§10.1-603.1 et seq. of the Code of Virginia) require that VSMP permits be effective for a fixed term not to exceed five years (§10.1-603.2:2 (B)). The State Water Control Board (Department of Environmental Quality) issued the existing 5-year general permit effective July 1, 2004 and expiring on June 30, 2009, thus necessitating the promulgation of a new general permit at this time. Operators covered under the expiring general permit who wish to continue to discharge under a general permit must file a registration statement and required permit fee for coverage under the new general permit.

Permit Number: VAR10

Name of Permittee: Any operator of a regulated construction activity discharging to the surface waters of the Commonwealth of Virginia who seeks coverage under the General Permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: State waters within the boundaries of the Commonwealth of Virginia, except those specifically named in regulations or policies which prohibit such discharges.

Discharge Type: Stormwater discharged from regulated construction activities

This proposed permit action is tentative. On the basis of preliminary review and application of lawful standards and regulations, the Board proposes to reissue this VSMP permit subject to certain conditions and has prepared a draft permit. The Board has determined that this category of discharges is appropriately controlled under a general permit. The category of discharges to be included involves facilities with the same or similar types of operations that discharge the same or similar types of stormwater.

**I. Facilities and Activities Subject to this General Permit**

The proposed general permit regulates stormwater discharges from construction activities. The term “construction activity” is defined in 4VAC50-60-10 as “...any clearing, grading or excavation associated with large construction activity or associated with small construction activity.” The terms “large construction activity” and “small construction activity” are likewise defined in that section as follows:

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

## **II. Type and Quantity of Discharge Authorized**

This permit authorizes discharges of stormwater from regulated construction activities to state waters within the boundaries of the Commonwealth of Virginia, except those specifically named in state regulations or policies that prohibit such discharges. The Board has determined that this category of discharges is appropriately controlled under a general permit, as the category of discharges to be included involves facilities with the same or similar types of operations that discharge the same or similar types of stormwater.

## **III. Legal Basis for Draft Permit Conditions**

The General Permit for Discharges of Stormwater from Construction Activities is a permit issued through regulation by the Board pursuant to the federal Clean Water Act and the Virginia Stormwater Management Law.

Requirements set forth in the federal Clean Water Act (33 USC §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-

576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto, and its attendant regulations set forth in 40 CFR Parts 122, 123, 124 and 125, require states to establish a permitting program for the management of stormwater from construction activities.

The basis for this permit under state law is the Virginia Stormwater Management Law, §10.1-603.1 et seq. of the Code of Virginia, and the Virginia Stormwater Management Program (VSMP) Permit regulations, 4VAC50-60-10 et seq. Specifically, §10.1-603.2:1 requires the Board to permit, regulate, and control stormwater runoff in the Commonwealth. In carrying out its responsibilities, the Board may issue, deny, revoke, terminate, amend and enforce permits for the control of stormwater discharges from land disturbing activities (subsection 1), adopt regulations (subsection 2), and otherwise act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. Additionally, §10.1-603.2:2(A) states that it shall be unlawful to cause a stormwater discharge from a land disturbing activity except in compliance with a permit. "Land disturbing activity" is defined in §10.1-603.2 as "...a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the federal Clean Water Act."

#### **IV. Public Comment and Procedures for General Permit Adoption by the Board**

Persons may comment in writing on the proposed issuance of the general permit during the public comment period, which will commence on October 27, 2008 and end at 5:00 p.m. on December 26, 2008. The Board will consider only those comments received within this period. Comments should include the name and address or email address of the commenter. Only those comments received within this period will be considered by the Board. All comments should be submitted to:

Regulatory Coordinator  
Virginia Department of Conservation and Recreation  
203 Governor Street, Suite 302  
Richmond, Virginia 23219

Comments may also be faxed to the Regulatory Coordinator at (804) 786-6141 or submitted electronically on the Virginia Regulatory Town Hall by selecting "comment period" at: <http://www.townhall.virginia.gov/L/ViewStage.cfm?stageid=4817>.

In order to be considered, comments must be received by 5:00 PM on December 26, 2008.

All pertinent information regarding this proposed regulation can be obtained at <http://www.dcr.virginia.gov/lr4b.shtml>. Hard copies are on file and may be inspected. To make arrangements for inspection and copying, or for additional information, contact Mr. David Dowling at (804) 786-2291.

Public hearings to receive comments on the proposed general permit regulations will be held at 7:00 p.m. on December 2, 2008 at the City of Manassas Council Chambers, 9027 Center Street,

Manassas, Virginia 20110; at 7:00 p.m. on December 3, 2008 at the Roanoke City Council Chambers, Noel C. Taylor Municipal Building, 215 Church Avenue Southwest, Roanoke, Virginia 24011; and at 7:00 p.m. on December 10, 2008 at the City of Williamsburg Council Chambers, 412 North Boundary Street, Williamsburg, Virginia 23185. Notice of the public hearings will be published in newspapers and in the Virginia Register. Following the public hearing comment period, the Board will make its determination regarding adoption of a final permit regulation.

## **V. Draft Permit Conditions and Limitations**

This section has been written in an informal style and follows the structure of the draft general permit, but does not reflect verbatim the actual language used in the permit. It is intended to provide a summary of the general permit, including major proposed changes, to assist the regulated community and members of the public. If any confusion, omission, or conflict exists between this factsheet and the actual permit language, the operator must comply with the permit as written.

### ***A. Summary of Significant Changes from the 2004 Construction General Permit***

The key proposed revisions to the permit include:

1. Updating and adding needed definitions such as “control measure”, “linear development project”, “qualified personnel”, “stormwater pollution prevention plan”, “Virginia Stormwater Management BMP Clearinghouse website”, and “minimize”.
2. Specifying that this general permit shall become effective on July 1, 2009 and expire on June 30, 2014.
3. Adding a statement that discharges to waters that have been identified as impaired on the 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under the permit unless they are addressed consistent with the terms of the permit, and that all control measures be protective of impaired waters.
4. Adding a requirement that stormwater discharges from construction activities not cause or contribute to an excursion (i.e., a violation) above any applicable water quality standard, and that all control measures be employed in a manner that is protective of water quality standards.
5. Updates to the registration statement (i.e., application) for coverage under the general permit, including:
  - a. A requirement that a complete registration statement be submitted prior to “the issuance of coverage under the general permit that authorizes the commencement of land disturbing activities...”, and that the “operator of a construction activity is authorized to discharge...only upon issuance of coverage under the general permit...” Currently, land disturbance is permitted to begin upon submittal (usually, mailing) of the registration statement; this new language changes that practice to require that coverage under the permit actually be issued by the Department prior to the time that land disturbing activities begin.

- b. A requirement that current permit coverage holders reapply for coverage under this new general permit. As the current general permit will expire on June 30, 2009, there are only two options in order to ensure continued coverage for active projects—either the existing general permit must be administratively continued, or all permit coverage holders must receive coverage under this permit. As either process requires reapplication by current coverage holders, and as it is believed that changes to this draft proposed permit will not detrimentally affect active projects, it is proposed that all projects receive coverage under this draft proposed permit.
  - c. A specification that only one construction activity operator may receive coverage under a single registration statement.
  - d. A requirement that each registration statement note direct discharges to any receiving water identified as impaired on the 2006 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity.
- 6. Updates to the notice of termination, which ends permit coverage, including:
  - a. Termination becomes effective at midnight on the date that it is submitted (previously, it had been effective seven days after submission).
  - b. A requirement that a list be included of the permanent control measures (both structural and nonstructural that were installed at the construction activity site. For each control measure that was installed, including type of permanent control measure, geographical location, waterbody the control measure discharges into, and number of acres treated. This information was previously required in the registration statement.
- 7. Updates to the requirements for and contents of a Stormwater Pollution Prevention Plan (SWPPP) for the construction site, including:
  - a. A requirement for the SWPPP to be made available to the public. Access to the SWPPP could be arranged at a time and location convenient to the operator (permittee), but no less than twice per month and during normal business hours.
  - b. A direct requirement that all operators implement an Erosion and Sediment Control plan or an “agreement in lieu of a plan” for the site in accordance with the Erosion and Sediment Control Law and Regulations. Previously, the SWPPP had been required to address Erosion and Sediment Control through specific language in the permit; however, as a practical matter, operators simply followed their approved E&S plans or “agreement in lieu of a plan”. This change aligns the permit language with that practice.
  - c. Clarification that water quality and quantity requirements must be met by the operator. Under the current permit, there has been confusion at times as to whether or not water quality measures are required on every site statewide. The draft proposed language makes it clear that water quality is required on all sites.
  - d. The addition of an option for inspections of the site to be conducted every seven days by the operator. The operator can still choose the current inspection schedule of every 14 days and within 48 hours following a runoff producing event if desired.

- e. A requirement that the operator report if there has been any correspondence with federal officials regarding endangered species on the site, and a description of any measures necessary to protect such species.
  - f. Requirements that TMDL wasteload allocations made to construction activities be addressed through the implementation of control measures and strategies contained in the SWPPP.
8. General updates to the basic Conditions Applicable to All VSMP Permits section that appears in every VSMP permit.
  9. The inclusion of new sections 4VAC50-60-1180, 1182, 1184, 1186, 1188, and 1190. These sections are direct copies of the currently-effective Part II (water quality and quantity) of the stormwater regulations. When the version of Part II that is currently undergoing development becomes effective, it will repeal the existing Part II. This would mean that all permittees at that time would then immediately become responsible for meeting the new Part II requirements, even though their plans were developed to meet the existing (currently effective) Part II requirements, and even though construction of the project under those plans may be well underway. In order to avoid that inequity, the permit specifically references the water quality and quantity requirements of these copied sections, which will prevent the changes to Part II from affecting persons holding coverage under this general permit. A new general permit will then be developed to incorporate the changes to Part II on a going forward basis for new projects.
  10. Updates to forms associated with the General Permit, including the registration statement (DCR 199-146), notice of termination (DCR 199-147), transfer form (199-191) and permit fee form (DCR 199-145).

### ***B. Activities Covered Under this General Permit***

The general permit will authorize discharges of stormwater associated with construction activity. For the purposes of this permit, construction activity is defined as any clearing, grading or excavation associated with large construction activity or associated with small construction activity as defined in 4VAC50-60-10, and except as otherwise exempt pursuant to the Virginia Stormwater Management Act (§10.1-603.1 et seq.).

This permit may also be used to authorize stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that: (1) the support activity is directly related to a construction site that is required to have VSMP permit coverage for discharges of stormwater associated with construction activity; (2) the support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and (3) appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas. Support activities located off-site are not required to be covered under this general permit and may be authorized under another VSMP or VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

***C. Limitations on Coverage***

This permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit. Stormwater discharges which the State Water Control Board has determined will cause or that may reasonably be expected to cause or contribute to a violation of water quality standards (9VAC25-260) are not covered by this permit. Discharges to waters for which a "total maximum daily load" (TMDL) allocation has been established are not eligible for coverage under this general permit unless they are addressed in accordance with 4VAC50-60-1170, Section II D 7. Discharges for which an individual permit has been required pursuant to 4VAC50-60-410B or which have been required to obtain coverage under an alternative general permit are not covered by this permit, nor are discharges to state waters specifically named in State Water Control Board regulations or policies that prohibit such discharges. Discharges to waters that have been identified as impaired in the 2006 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this general permit unless they are addressed in accordance with 4VAC50-60-1170, Sections I H and II D 8.

Any discharge authorized by a different VPDES or VSMP permit may be commingled with discharges authorized by this permit, as may be other sources of stormwater that are not required to be covered under a VSMP permit. The following nonstormwater discharges from active construction sites are authorized by this permit: discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles where detergents are not used; water used to control dust; potable water sources including uncontaminated waterline flushings; routine external building wash down which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; uncontaminated air conditioning or compressor condensate; uncontaminated ground water or spring water; foundation or footing drains where flows are not contaminated with process materials such as solvents; uncontaminated excavation dewatering, and landscape irrigation.

Prior to commencing construction, the operator shall obtain approval of an erosion and sediment control plan from the locality in which the construction activity is to occur or from another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulations, 4VAC50-30, unless the operator receives from the locality an "agreement in lieu of a plan" as defined in 4VAC50-30-10, or is exempt from the requirement to submit an erosion and sediment control plan by §10.1-560 of the Code of Virginia.

The discharge of hazardous substances or oil in the stormwater discharges from the construction site shall be prevented or minimized in accordance with the stormwater pollution prevention plan for the site. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) and 40 CFR Part 302 (2002) or §62.1-44.34:19 of the Code of Virginia. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002), or 40 CFR Part 302 (2002), or §62.1-44.34.19 of the Code of Virginia occurs

during a 24-hour period:

1. The operator is required to notify the Department of Environmental Quality and the permit-issuing authority in accordance with the requirements of Section III G as soon as he has knowledge of the discharge;
2. Where a release enters a municipal separate storm sewer system (MS4), the operator shall also notify the operator of the MS4; and
3. The stormwater pollution prevention plan required under Section II D of this permit must be reviewed by the operator to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate within seven calendar days of knowledge of a release.

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

The operator must select, install, implement and maintain control measures at the construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards. In general, except in situations explained in subdivision 2 below, the stormwater control measures developed, implemented, and updated consistent with Section II shall be considered as stringent as necessary to ensure that the operator's discharges do not cause or contribute to an excursion above any applicable water quality standard. If it is determined at any time that the operator's stormwater discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the permit issuing authority shall require the operator to:

1. Modify control measures in accordance with Section II C to adequately address the identified water quality concerns;
2. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
3. Cease discharges of pollutants from construction activity and submit an individual permit application according to 4VAC50-60-410 B 3.

Receipt of coverage under this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

#### ***D. Stormwater Pollution Prevention Plan (SWPPP)***

The operator is required to develop a stormwater pollution prevention plan. The SWPPP is intended to identify potential sources of pollutants which may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures which will be used to minimize pollutants in stormwater discharges from the construction site and comply with the terms and conditions of the general permit. SWPPPs shall be prepared in accordance with good engineering practices.

The stormwater pollution prevention plan requirements of the general permit may be fulfilled by incorporating by reference other plans such as an erosion and sediment control (ESC) plan, an agreement in lieu of a plan as defined in 4VAC50-30-10, a stormwater management plan, a spill

prevention control and countermeasure (SPCC) plan, or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of the permit. If an erosion and sediment control plan for the construction activity is being incorporated by reference, it must be approved by the locality in which the construction activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulations (4 VAC50-30-10 et seq.) prior to the commencement of land disturbance. All plans incorporated by reference into the stormwater pollution prevention plan become enforceable under the permit.

### 1. Deadlines for Plan Preparation

The stormwater pollution prevention plan must be completed prior to the submittal of a registration statement to be covered under this permit and updated in accordance with Section II C from commencement of construction activity until final stabilization is complete. For ongoing construction activities involving a change of operator, the new operator must accept and maintain the existing SWPPP or prepare and implement a new SWPPP prior to taking over operations at the site.

### 2. Signature, Plan Review, and Making Plans Available

The plan must be signed in accordance with the Section III K, and must be retained on site or other location easily accessible during normal business hours, with a copy of the general permit, registration statement, and acknowledgement letter from the permit issuing authority. The SWPPP must be made available, in its entirety, to the Department, the permit issuing authority, and the operator of a municipal separate storm sewer system receiving discharges from the site for review at the time of an on-site inspection. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of a construction site.

A sign or other notice must be posted conspicuously near the main entrance of the construction site. The sign or other notice must contain a copy of the permit coverage letter that includes the registration number for the construction activity, and, if the location of the SWPPP or the name and telephone number of the contact person for scheduling SWPPP viewing times has changed (i.e., is different than that submitted to the permit issuing authority in the registration statement), the current location of the SWPPP and name and telephone number of a contact person for scheduling viewing times. For linear projects, the sign or other notice must be posted at a publicly accessible location near the active part of the construction project.

The operator shall make the SWPPP available to the public for review upon request. Access to the SWPPP may be arranged at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than twice per month and shall be during normal business hours. Information shall not be required to be released if it is excluded from disclosure under applicable law.

### 3. Maintaining an Updated SWPPP

The operator must amend the plan whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the potential for the discharge of pollutants to state

waters and that has not been previously addressed in the SWPPP. The plan must also be amended if inspections or investigations by the operator's qualified personnel or by local, state, or federal officials determine that existing control measures are ineffective in minimizing pollutants in stormwater discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed to correct problems identified. If approval by a plan approving authority is necessary for the control measure, revisions to the SWPPP shall be completed within seven calendar days of approval. Implementation of these additional or modified control measures must be accomplished as described in Section II D 3 b.

The SWPPP must clearly identify the contractor(s) or subcontractor(s) that will implement and maintain each measure identified in the SWPPP. The SWPPP shall be revised to identify any new contractor that will implement a measure.

#### 4. Stormwater Pollution Prevention Plan Contents

Stormwater pollution prevention plans must include all items required by the general permit, including those set forth in Section II D. These include:

- a. Site and activity description information (as set forth in Section II D 1), including:
  - i. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);
  - ii. The intended sequence and timing of activities that disturb soils at the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation);
  - iii. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated;
  - iv. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities including off-site borrow and fill areas;
  - v. A description of any other potential pollutant sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.;
  - vi. Identification of the nearest receiving waters at or near the construction site that will receive discharges from disturbed areas of the project;
  - vii. The location and description of any discharge associated with industrial activity other than construction at the site. This includes stormwater discharges from dedicated asphalt plants and dedicated concrete plants that are covered by this permit;
  - viii. A legible general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with sufficient detail to identify the location of the construction activity and surface waters within one mile of the construction activity; and
  - ix. A legible site map identifying:
    - (1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;
    - (2) Areas of soil disturbance and areas of the site which will not be disturbed;

- (3) Locations of major structural and nonstructural control measures identified in the SWPPP, including those that will be permanent after construction activities have been completed;
- (4) Locations where stabilization practices are expected to occur;
- (5) Locations of surface waters;
- (6) Locations where concentrated stormwater discharges;
- (7) Locations of off-site material, waste, borrow or equipment storage areas covered by the SWPPP;
- (8) Locations of other potential pollutant sources, such as vehicle fueling, storage of chemicals, concrete wash-out areas, sanitary waste facilities including those temporarily placed on the construction site, etc.; and
- (9) Areas where final stabilization has been accomplished.

- b. Controls to minimize pollutants (as set forth in Section II D 2), including:
- i. *Erosion and sediment controls*: an erosion and sediment control plan or agreement in lieu of a plan shall be approved by the appropriate plan approving authority for the land disturbing activity in accordance with the Virginia Erosion and Sediment Control Law (§10.1-560 et seq.) and Regulations (4VAC50-30-10 et seq.) (where applicable, a plan may be developed in accordance with Board-approved annual general erosion and sediment control specifications). All control measures required by the plan shall be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law and Regulations.
  - ii. *Management Practices*: site plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized. All control measures must be properly selected, installed, and maintained in accordance with good engineering practices and, where applicable, manufacturer specifications. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the operator must replace or modify the control for site situations as soon as practicable and update the SWPPP in accordance with Section II C. If sediment escapes the construction site, off-site accumulations of sediment must be removed as soon as practicable to minimize off-site impacts. If approval by a plan approving authority is necessary, control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained. Construction debris and construction chemicals exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges. Litter exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges and the construction site shall be policed daily to control litter.
  - iii. *Stormwater Management*: the operator shall ensure compliance with the requirements of 4VAC50-60-1180 through 1190 of the Virginia Stormwater Management Regulations, including but not limited to water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed during the construction process to control pollutants in

stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable local, state, and federal requirements, and any necessary permits must be obtained. Control measures contained in Part II of the Virginia Stormwater Management Regulations, 4VAC50-60-1184, or on the Virginia BMP Clearinghouse may be utilized. Innovative or alternate control measures may be allowed by the Department provided such measures effectively address water quality and quantity in accordance with the requirements of 4VAC50-60-1180 through 1190 and are not restricted by the locality. Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel as defined in the Virginia Erosion and Sediment Control Regulations (4VAC50-30-10 et seq.). In addition, all control measures shall be employed in a manner which minimizes impacts on the physical, chemical and biological integrity of rivers, streams, and other state waters, is protective of water quality standards, and is consistent with Section II D 6 through 8 and other applicable provisions of the general permit.

iv. *Other Controls*: the SWPPP shall describe measures to prevent the discharge of solid materials, including building materials, garbage, and debris to state waters, except as authorized by a Clean Water Act §404 permit. The SWPPP shall describe control measures used to comply with applicable state or local waste disposal, sanitary sewer or septic system regulations. The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP shall also include a description of controls, including storage practices, to minimize exposure of the materials to stormwater, and for spill prevention and response. The SWPPP shall include a description of pollutant sources from off-site areas (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of control measures that will be implemented at those sites to minimize pollutant discharges.

v. *Controls Required by Applicable State or Local Programs*: the control measures implemented at the site shall be consistent with all applicable federal, state, or local requirements for erosion and sediment control and stormwater management. The SWPPP shall be updated as necessary to reflect any revisions to applicable federal, state or local requirements that affect the control measures implemented at the site.

c. Maintenance of controls (as set forth in Section II D 3): all control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacture specifications. If site inspections required by Section II D 4 identify control measures that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as soon as practicable to maintain the continued effectiveness of stormwater controls. If site inspections required by Section II D 4 identify existing control measures that need to be modified or if additional control measures are necessary for any reason, implementation shall be

completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, the situation shall be documented in the SWPPP and alternative control measures shall be implemented as soon as practicable.

d. Inspections (as set forth in Section II D 4): The name and phone number of qualified personnel conducting inspections shall be included in the SWPPP.

i. Inspections shall be conducted (i) at least every seven calendar days or (ii) at least once every 14 calendar days and within 48 hours following any runoff producing storm event. Where areas have been temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or frozen ground exists) such inspections shall be conducted at least once every month.

ii. Inspections must include all areas of the site disturbed by construction activity, off-site areas, and areas used for storage of materials that are exposed to precipitation. Inspectors must look for evidence of, or the potential for, pollutants entering a stormwater conveyance system. Control measures identified in the SWPPP shall be inspected for proper installation, maintenance, and operation. Discharge locations, where accessible, shall be inspected to ascertain whether control measures are effective in minimizing impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

iii. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Section II D 4 b. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25-mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25-mile segment to either the end of the next 0.25-mile segment, or to the end of the project, whichever occurs first. Inspection locations must be listed in the report required by Section II D 4 e.

iv. A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section II D 4 d of the permit shall be made and retained as part of the SWPPP in accordance with Section III B of this permit. Major observations should include:

- (1) The location(s) of discharges of sediment or other pollutants from the site;
- (2) Location(s) of control measures that need to be maintained;
- (3) Location(s) of control measures that failed to operate as designed or proved inadequate for a particular location;
- (4) Location(s) where additional control measures are needed that did not exist at the time of inspection;
- (5) Corrective action required including any changes to the SWPPP that are necessary and implementation dates;
- (6) The amount of rainfall at the construction site (in inches) from the runoff producing storm event requiring the inspection, or if inspecting on a seven day schedule, the amount of rainfall (in inches) since the previous inspection; and
- (7) Weather information and a description of any discharges occurring at the time of inspection.

A record of each inspection and of any actions taken in accordance with Section II must be retained by the operator as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and the general permit. The report shall be signed in accordance with Section III K.

e. Nonstormwater discharge management (as set forth in Section II D 5): the SWPPP shall identify all allowable sources of nonstormwater discharges listed in Section I D 2 of the general permit that are combined with stormwater discharges from the construction activity at the site, except for flows from firefighting activities. The SWPPP shall identify and require the implementation of appropriate control measures for the nonstormwater components of the discharge.

f. Endangered Species (as set forth in Section II D 6): If applicable, the SWPPP shall include any correspondence for any stage of project planning between the U.S. Fish and Wildlife Service, EPA, the U.S. National Marine Fisheries Service, or others and the operator regarding listed species and critical habitat. The SWPPP shall also include, if applicable, a description of measures that were determined necessary to protect federally-listed endangered or threatened species, or federally-designated critical habitat.

g. Total Maximum Daily Loads (as set forth in Section II D 7): a total maximum daily load (TMDL) approved by the State Water Control Board may include a wasteload allocation to the regulated construction activity that identifies the pollutant for which stormwater controls are necessary for the surface waters to meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date of this permit must be specified in the SWPPP and addressed through use of strategies and control measures as specified in the SWPPP. Implementation of the strategies and control measures consistent with the provisions of this permit constitutes compliance with the

assumptions and requirements of the approved TMDL. The SWPPP shall include strategies and control measures to ensure consistency with the assumptions and requirements of the TMDL WLA. The SWPPP shall be updated within 30 days of the effective date of any reopening of this permit to include wasteloads allocated to the construction activity after issuance of permit coverage and shall implement such strategies and control measures.

h. Impaired waters (as set forth in Section II D 8): control measures shall be protective of water quality standards for impaired waters identified as having impairments for pollutants that may be discharged from the construction activity in the 2006 305(b)/303(d) Water Quality Assessment Integrated Report in accordance with Section I H.

#### ***E. Conditions related to TMDLs and Impaired Waters***

The draft general permit contains several specific conditions related to water quality standards, impaired waters, and waters for which a Total Maximum Daily Load (TMDL) wasteload allocation (WLA) has been established. The first such conditions relate to the eligibility of discharges for permit coverage. 4VAC50-60-1130 (as well as Section I B 5 of 4VAC50-60-1170) explains that discharges to waters that have been identified as impaired in the 2006 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage unless they are addressed in accordance with Section I H of the general permit. Likewise, discharges which the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards are not covered by the permit. Finally, discharges to waters for which a TMDL WLA has been established are not eligible unless they are addressed in accordance with Section II D 7 of the general permit.

Secondly, the draft general permit will require all applicants to determine prior to obtaining permit coverage whether a permitted activity will directly discharge to an impaired water or a water for which there is an applicable TMDL WLA that was developed prior to the effective date of this permit. 4VAC50-60-1150(B) will require all operators to identify in their registration statements direct discharges to any receiving water identified as impaired on the 2006 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity. Similarly, Section II D 7 requires that the pollutant identified in the WLA be specified in the operator's SWPPP.

The draft general permit generally provides that the stormwater control measures developed, implemented, and updated consistent with its terms will be considered as stringent as necessary to ensure that the operator's discharges do not cause or contribute to an excursion above any applicable water quality standard and constitute compliance with the assumptions and requirements of an applicable TMDL. The terms of the permit then require operators to address any discharges to impaired waters, waters for which a TMDL WLA has been established for stormwater discharges from a construction activity, or that are discovered to have the reasonable potential to cause or contribute to an excursion above any applicable water quality standard. Section I H, for example, specifies that if it is determined at any time that the operator's

stormwater discharges have the reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the operator shall be required to (1) modify control measures in accordance with Section II C to adequately address the identified water quality concerns, (2) submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards, or (3) cease discharges of pollutants from construction activity and submit an individual permit application. Section II D 8 of 4VAC50-60-1170 (as well as II D 2) requires that control measures be protective of water quality standards for waters having impairments for pollutants that may be discharged from the construction activity. Finally, with regard to TMDL WLAs, section II D 7 specifies that the pollutant identified in a WLA must be addressed through the use of strategies and control measures that are specified in the SWPPP.

#### ***F. Alternatives to Required Standards***

As noted above, the draft general permit includes and requires compliance with new sections 4VAC50-60-1180 through 4VAC50-60-1190. These sections are the direct insertion of the current sections contained in Part II of the VSMP regulations into the general permit. This insertion will ensure that all operators receiving coverage under the draft general permit are governed by the same requirements originating from Part II (including post-construction water quality) throughout the life of the permit. Part II is currently undergoing substantial revisions through a separate regulatory process; it is anticipated that changes to Part II will become effective during the draft general permit's lifespan. Construction activities already underway (and, conceivably, some near completion) would face changing standards if the draft general permit simply referenced the requirements of Part II as those to be followed by coverage holders. This would result in inequity and hardship to operators who, in good faith, had planned and constructed their sites in accordance with the earlier Part II requirements. Therefore, it was determined that the proper course of action was to embody the current Part II requirements in the language of the draft general permit, and to explicitly require compliance with those requirements. Following the completion of revisions to Part II, a new general permit may be developed that incorporates the new Part II requirements. This approach was placed before the technical advisory committee that assisted with the preparation of the draft general permit and no opposition was voiced.

It was recommended through the technical advisory committee process that numeric effluent limitations for specific pollutants, including total suspended solids, be included in the draft general permit. No such standard currently exists. The current, separate regulatory action to amend Part II of the VSMP regulations does seek to establish, in effect, numeric effluent limitations for phosphorus from new development and redevelopment. That regulatory process has been underway for three years, and has been the subject of numerous technical advisory committee and subcommittee meetings, commissioned studies, design charrettes, and other lengthy discussion during that time period. When completed, the requirements of the revised Part II will be available to be incorporated into a later-issued general permit. Due to the extensive discussions and research that has gone into the development of the revised Part II, it is believed inappropriate to include a separate numeric effluent limitation in the draft general permit without a similar process. No such extensive process has been completed to date; nor is it

feasible to engage in such a process and still allow for the issuance of this draft general permit by the June 30, 2009 expiration of the current general permit. Moreover, it is believed that EPA has been considering the adoption of numeric effluent limitations for stormwater discharges; while the present status of that consideration is not known, it is likewise appropriate for Virginia to view the final outcome of the EPA process before proceeding on developing standards beyond what is being considered in the current Part II regulatory process.